



HIGH COURT OF AUSTRALIA

4 May 2011

SKA v THE QUEEN
[2011] HCA 13

SKA was convicted of five counts of sexual offences against a child committed when the child was staying at the house of SKA and his family. The offences were alleged to have been committed in two time periods. Three counts were alleged to have occurred in 2004. Counts four and five were alleged to have occurred between 1 December 2006 and 25 December 2006. In relation to counts four and five, the child was unable to specify a date on which the incidents took place but gave evidence that it was around Christmas 2006. The date on which these two offences were said to have occurred was critical because SKA led evidence at trial which provided an alibi for the period from the evening of 22 December 2006 up to and including Christmas Eve.

SKA appealed to the Court of Criminal Appeal of New South Wales against conviction and sentence, including under s 6(1) of the *Criminal Appeal Act 1912* (NSW) on the ground that the verdicts of the jury were perverse and not supported by the evidence. Section 6(1) states that the Court of Criminal Appeal "shall allow the appeal if it is of opinion that the verdict of the jury should be set aside on the ground that it is unreasonable, or cannot be supported, having regard to the evidence". The Court of Criminal Appeal dismissed SKA's appeals and allowed the Crown's cross-appeal against sentence.

SKA's application for special leave to appeal to the High Court from the Court of Criminal Appeal's decision was referred to the Full Court. Today, the High Court granted special leave on three grounds of appeal, and a majority of the Court allowed the appeal, holding that the Court of Criminal Appeal had incorrectly concerned itself with whether, as a question of law, there was evidence to support the verdicts, rather than making its own assessment of the evidence. The High Court held that it was critical for the Court of Criminal Appeal to determine the date at which it was alleged, in the evidence, that SKA committed the offences the subject of counts four and five. The Court of Criminal Appeal's failure to do so led the Court into error when considering the sufficiency of evidence to support the jury's verdict.

The High Court also refused special leave to appeal on two grounds of appeal, holding that the Court of Criminal Appeal was not in error in not viewing a video recording of an interview between the child and the police, instead relying on a transcript of the recording.

The order of the Court of Criminal Appeal dismissing SKA's appeal against conviction to that Court was set aside and the matter was remitted to the Court of Criminal Appeal for rehearing.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*